

# EXHIBIT 49

Donovan, Lynn

April 29, 2008

Honolulu, HI

Page 1

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

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STATE OF HAWAII, )  
Plaintiff, )  
v. ) CIVIL NO.  
ABBOTT LABORATORIES INC., ) 06-1-0720-04 EEH  
et al., ) 07-1-1639-09 EEH  
Defendants. )

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STATE OF HAWAII )  
Plaintiff, )  
v. )  
SCHERING CORPORATION; DOE )  
CORPORATIONS 1-100; DOE )  
ENTITIES 1-100, )  
Defendants. )

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DEPOSITION OF LYNN DONOVAN

APRIL 29, 2008

HONOLULU, HAWAII

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<p style="text-align: right;">Page 186</p> <p>1 Q. (BY MR. MOORE) Ms. Donovan, staying 2 with Exhibit 10, I've got quite a few questions 3 just on this document. Were you recommending 4 that the State substitute the First Health MAC 5 prices for the Hawaii MAC prices to save money?</p> <p>6 A. I wouldn't say I was recommending it, 7 but then I wasn't opposing it. I -- the 8 contractor was hired and they were making 9 recommendations.</p> <p>10 Q. Okay. But you weren't -- were you just 11 neutral on the subject or did you have a view one 12 way or the other?</p> <p>13 A. Did I have a view? It seemed like it 14 would save the program money based on the 15 recommendation, and if that's what the program 16 wanted, fine.</p> <p>17 Q. Okay. Let's go to the next one. The 18 second paragraph in Exhibit 10 it says, currently 19 the Hawaii algorithm requires the FUL to override 20 the Hawaii MAC. Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. And in your testimony when you started</p>	<p style="text-align: right;">Page 188</p> <p>1 A. Uh-huh.</p> <p>2 Q. Since you implemented the State MAC 3 program in 2001, if you had a FUL in the system 4 that was higher than the State MAC, it would 5 override on the reimbursement, correct?</p> <p>6 A. It would pay at the FUL.</p> <p>7 Q. It would pay at the higher price, 8 right?</p> <p>9 A. Whatever the FUL is.</p> <p>10 Q. Okay. And that's been the case all the 11 way up until today, correct?</p> <p>12 A. That's correct.</p> <p>13 Q. It's still being done that way?</p> <p>14 A. Yes.</p> <p>15 Q. Why would you have a system where you 16 have a lower MAC price and a higher federal FUL 17 price and use the highest of the two prices 18 rather than the lowest of the two prices? Why do 19 you do that?</p> <p>20 A. That was the input from the Hawaii 21 Pharmacy Association and that was the agreement.</p> <p>22 Q. Okay. So I think you said -- picking</p>
<p style="text-align: right;">Page 187</p> <p>1 the deposition today, you mentioned briefly 2 something about this, that the -- under the 3 Hawaii reimbursement system that it was set up so 4 that the FUL price would override the Hawaii MAC 5 price; is that true?</p> <p>6 A. That's correct.</p> <p>7 Q. Okay. And that's even if the FUL price 8 is higher, right?</p> <p>9 A. That's correct.</p> <p>10 Q. So in other words, you could have even 11 -- and has this been the case since you 12 implemented the State MAC program in 2001?</p> <p>13 Has it always been that way, to your 14 knowledge, that the FUL -- the higher FUL price 15 would override a lower Hawaii MAC price?</p> <p>16 A. Well, the FUL overrides the SMAC 17 regardless --</p> <p>18 Q. Okay.</p> <p>19 A. -- of whether it's more or less.</p> <p>20 Q. Okay. But I want to concentrate on the 21 situation where the FUL is higher than the SMAC, 22 okay?</p>	<p style="text-align: right;">Page 189</p> <p>1 up again on your testimony earlier today -- that 2 in the '96, '97 time frame -- I'm looking at my 3 notes here, there was notice given to the 4 pharmacy association about implementing the State 5 MAC program and you said several considerations 6 were reached with the pharmacy association. That 7 was the term you used, correct?</p> <p>8 A. Correct.</p> <p>9 Q. Is that the same thing as a deal? In 10 other words, you reached a deal with the 11 pharmacists?</p> <p>12 A. A deal?</p> <p>13 Q. A deal. 14 Do you know what I mean by that?</p> <p>15 A. No.</p> <p>16 Q. I'll give you something, if you'll give 17 me something in return; a deal. That's a term 18 you understand?</p> <p>19 A. I think -- I would call it input.</p> <p>20 Q. Input, okay. Whatever we call it, and 21 I don't think it really matters, it was an 22 agreement -- an understanding was reached in --</p>